

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of Applications of)	
)	
MOBEX NETWORK SERVICES, LLC)	File Nos. 0001438800 and 0001439011
)	
To Modify Licenses for Automated Maritime)	
Telecommunications System (AMTS) Stations in)	
Chicago, Illinois, Rockfish, North Carolina and)	
Hillsborough, North Carolina)	

ORDER

Adopted: November 8, 2005

Released: November 9, 2005

By the Chief, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau:

1. *Introduction.* On September 3, 2003, Mobex Network Services, LLC (Mobex) filed applications to modify its licenses for Automated Maritime Telecommunications System (AMTS) stations in Chicago¹ and North Carolina.² On October 9, 2003 Warren C. Havens (Havens) filed a petition to deny both applications. On October 24, 2003, KM LPTV of Chicago-13, LLC (KM), licensee of Class A Television Station WOCK, Channel 13, Chicago, Illinois, filed a petition to deny the Mobex Chicago application. For the reasons that follow, we deny the Havens petition, grant the KM petition, deny the Mobex Chicago modification application and grant its North Carolina modification application.

2. *Background.* On September 3, 2003, Mobex filed the above-captioned applications to relocate certain AMTS transmitters.³ AMTS stations provide automated, integrated, interconnected ship-to-shore communications similar to a cellular phone system for tugs, barges, and other maritime vessels.⁴ In establishing the rules permitting AMTS stations, the Commission considered the potential for interference to television reception, particularly Channels 10 and 13, because of the proximity of AMTS frequencies to these television channels, and conditioned the operation of AMTS coast stations on the requirement that no harmful interference be caused to television reception.⁵ Under the Commission's Rules, an applicant proposing to locate an AMTS station within 169 kilometers (105 miles) of a Channel 13 television station

¹ Call Sign KPB531. See File No. 0001438800 (filed Sept. 3, 2003).

² Call Sign WHV733. See File No. 0001439011 (filed Sept. 3, 2003).

³ See *Public Notice*, Report No. 1657 (WTB rel. Nov. 12, 2003).

⁴ See Amendment of Parts 2 and 80 of the Commission's Rules Applicable to Automated Maritime Telecommunications Systems (AMTS), *First Report and Order*, GEN Docket No. 88-732, 6 FCC Rcd 437, 437 ¶ 3 (1991) (*AMTS First Report and Order*).

⁵ See 47 C.F.R. § 80.215(h); Amendment of Parts 2, 81 and 83 of the Commission's Rules to Allocate Spectrum for an Automated Inland Waterways Communications System (IWCS) along the Mississippi River and Connecting Waterways, *Report and Order*, GEN Docket No. 80-1, 84 FCC 2d 875, 897-98 ¶ 81 (*IWCS Report and Order*), on recon., *Memorandum Opinion and Order*, GEN Docket No. 80-1, 88 FCC 2d 679 (1981).

must submit an engineering study demonstrating the means used to avoid interference within the television station's Grade B contour.⁶ Where there are at least one hundred residences within both the proposed AMTS station's predicted interference contour and the Channel 13 television station's Grade B contour, the AMTS applicant must (1) show that its proposed site is the only suitable location, (2) develop a plan to control any interference its operations cause within the Grade B contour, and (3) agree to make any necessary adjustments to affected television receivers to eliminate such interference.⁷ In addition, any AMTS licensee that, despite these precautions, causes interference to television reception within the television station's Grade B contour must cure the problem within ninety days or cease operations, and must also help resolve complaints of interference to viewers outside the television station's Grade B contour.⁸

3. *Discussion. Havens Petition.* Havens does not raise any specific objection to the proposed station relocations. Rather, Havens asserts various arguments with respect to the validity of Mobex's licenses, and contends that the Commission should deny the modification applications because the Commission should cancel the underlying licenses for failure to meet construction requirements.⁹ Havens previously asserted the same arguments with respect to these licenses in petitions to deny Mobex's applications to renew and transfer these (and other) licenses. On December 28, 2004, after the present petition was filed, we considered and rejected those arguments, finding that Havens failed to demonstrate that the licenses for these stations should be deemed to have cancelled automatically for failure to meet construction requirements.¹⁰ Havens raises no new facts or circumstances warranting a reversal of that decision. We therefore deny the present petition to deny.

4. *KM Petition.* Our decision regarding the KM Petition also is informed by a prior decision. In 1998, Mobex's predecessor in interest filed an application for a new AMTS station at the Sears Tower in Chicago.¹¹ KM filed a petition to deny the application, arguing, *inter alia*, that the applicant's plan to avoid interference was inadequate, and that the potential for interference would be minimized if the AMTS station were instead co-located with KM's station WOCK transmitter on the John Hancock Building.¹² In 1999, the Wireless Telecommunications Bureau's Public Safety and Private Wireless Division (Division)¹³ agreed that the proposed plan¹⁴ was inadequate for an AMTS station that was not

⁶ 47 C.F.R. § 80.475(a)(1); *see AMTS First Report and Order*, 6 FCC Rcd at 437 ¶ 5.

⁷ 47 C.F.R. § 80.215(h)(3).

⁸ 47 C.F.R. § 80.215(h)(4); *see AMTS First Report and Order*, 6 FCC Rcd at 437 ¶ 5.

⁹ Havens Petition at 2-5.

¹⁰ *See Mobex Network Services, LLC, Order*, 19 FCC Rcd 24939, 24944 ¶ 10 (WTB PSCID 2004).

¹¹ File No. 852227 (filed Oct. 23, 1998).

¹² *See Fred Daniel d/b/a Orion Telecom, Memorandum Opinion and Order*, 14 FCC Rcd 3909, 3911-12 ¶¶ 6-7 (WTB PSPWD 1999) (*Sears Tower Order*). Co-location generally reduces the potential for interference to television reception. *Id.* at 3911 n.18 (citing Amendment of Parts 0, 1, 2, and 95 of the Commission's Rules to Provide Interactive Video and Data Services, *Report and Order*, GEN Docket No. 91-2, 7 FCC Rcd 1630, 1634 n.51 (1992); Fred Daniel d/b/a Orion Telecom, *Memorandum Opinion and Order*, 13 FCC Rcd 15446, 15448 (WTB PSPWD 1998) (*San Clemente Order*), *aff'd*, *Order on Reconsideration*, 14 FCC Rcd 1057 (WTB PSPWD 1999)).

¹³ The Commission reorganized the Wireless Telecommunications Bureau effective November 13, 2003, and the relevant duties of the Public Safety and Private Wireless Division were assumed by the Public Safety and Critical (continued....)

co-located with the potentially affected television station, and denied the application.¹⁵ In 2000, the Division granted the subsequent application¹⁶ of Mobex's predecessor in interest for a new AMTS station at the Hancock Building.¹⁷

5. Mobex now seeks to relocate this station to the Sears Tower, because it has experienced interference from other transmitters at the Hancock Building.¹⁸ We note, however, that Mobex proposes substantially the same plan to avoid interference that the Division previously deemed inadequate for the Sears Tower.¹⁹ In addition, Mobex has been operating a fill-in station²⁰ at the Sears Tower since approximately June 2003,²¹ and KM reports increased viewer complaints and a noticeable reduction in signal quality since the summer of 2003.²² That a station is proposed to be relocated to a location from which the applicant could operate a fill-in station without prior authorization does not relieve the applicant of the requirement to submit an adequate plan to avoid interference, or any related requirements.²³ Consequently, we grant KM's petition, because Mobex has not adequately demonstrated that the proposed station will not cause interference to television reception.

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Infrastructure Division. See Reorganization of the Wireless Telecommunications Bureau, *Order*, 18 FCC Rcd 25414, 25414 ¶ 2 (2003).

¹⁴ The applicant planned to install channels in reverse order of frequency, installing the highest frequencies (*i.e.*, those farthest away from Television Channel 13) first, and moving downward in frequency only as required by subscriber demand; and to investigate any viewer complaints, and make such adjustments to television receivers as may be necessary to eliminate interference caused by its operations. See *Sears Tower Order*, 14 FCC Rcd at 3911-12 ¶ 7.

¹⁵ *Id.* at 3912 ¶ 7. The Division stated, "Section 80.215(h)(3) of the Commission's Rules allows grant of an application for a proposed AMTS station with one hundred residences within both its predicted interference contour and a Channel 13 television station's Grade B contour 'only under exceptional circumstances, and requires that the stringency of the plan to control interference . . . be commensurate with the number of potentially affected residences.'" *Id.* (quoting *San Clemente Order*, 13 FCC Rcd at 15451 (citing *IWCS Report and Order*, 84 F.C.C. 2d at 897)) (footnotes omitted).

¹⁶ File No. 852743 (filed Sept. 20, 1999).

¹⁷ See *RegioNet Wireless License, LLC, Order*, 15 FCC Rcd 11013, 11017 ¶ 9 (WTB PSPWD 2000).

¹⁸ See *Mobex Opposition to KM* at 3-4.

¹⁹ See File No. 0001438800, Exhibit I – Plan for Mitigation of Potential Interference.

²⁰ Fill-in stations are stations that do not expand the interference contour of the system as a whole. See Implementation of Sections 3(n) and 332 of the Communications Act, *Further Notice of Proposed Rule Making*, GEN Docket No. 93-252, 9 FCC Rcd 2863, 2873-74 ¶ 45 (1994). AMTS licensees are permitted to construct "fill-in" sites without filing individual applications, but such sites are fully subject to the requirement that AMTS stations cause no harmful interference to television reception, and must discontinue operations if unable to meet this requirement. See 47 C.F.R. §§ 80.215(h), 80.475(b).

²¹ See *Mobex Opposition to KM* at 4.

²² See *KM Petition at Exhibit A – Affidavit of Kevin Joel Bae*. Mobex did not respond to KM's interference claim. Mobex merely argues that KM's engineering data should be disregarded because KM overstated the protected contour to which it is entitled. See *Mobex Opposition to KM* at 2. We find this disputed question to be immaterial in light of KM's uncontested allegation of actual interference.

²³ See *Mobex Network Services, LLC, Order*, 18 FCC Rcd 12305, 12307-08 ¶ 6 (WTB PSPWD 2003).

6. *Conclusion and Ordering Clauses.* For the reasons set out above, we deny Havens's petition to deny. Further, we grant KM's petition to deny because Mobex has not adequately demonstrated that proposed station KPB531 will not cause interference to television reception. Consequently, application File No. 0001438800 will be denied, and application File No. 0001439011 will be granted.

7. Accordingly, IT IS ORDERED, pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and Section 1.939 of the Commission's Rules, 47 C.F.R. § 1.939, that the petition to deny filed by Warren C. Havens on August 7, 2003 IS DENIED.

8. IT IS FURTHER ORDERED that the petition to deny filed by KM LPTV of Chicago-13, LLC on October 24, 2003 IS GRANTED.

9. IT IS FURTHER ORDERED that applications File Nos. 0001438800 and 0001439011 SHALL BE PROCESSED consistent with this *Order* and the Commission's Rules.

10. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Michael J. Wilhelm
Chief, Public Safety and Critical Infrastructure Division
Wireless Telecommunications Bureau